

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

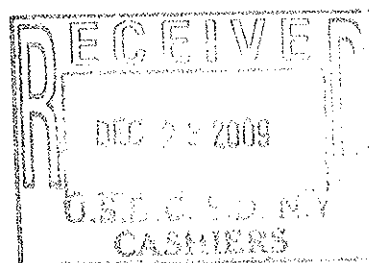
THE NEW YORK TIMES COMPANY and RON
NIXON,

Plaintiffs,

- against -

UNITED STATES DEPARTMENT OF
THE TREASURY,

Defendant.



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COMPLAINT

Plaintiffs The New York Times Company and Ron Nixon (jointly, "NYT"), by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), to order the production of agency records and information improperly withheld by Defendant in response to a request properly made by Plaintiffs.

2. The Office of Foreign Assets Control ("OFAC"), a component of Defendant United States Department of the Treasury ("Treasury"), issues licenses to individuals and corporations that permit them to engage in economic activity in certain foreign states that are subject to economic sanctions and embargoes. Through this action NYT seeks to compel OFAC to release certain information concerning individuals that have received such licenses, which information OFAC has redacted in responding to NYT's FOIA request.

3. Specifically, NYT seeks identifying information redacted from an OFAC spreadsheet of individual licensees who are authorized to engage in otherwise prohibited transactions.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

6. The New York Times Company is the publisher of *The New York Times* ("The Times"). In 2008, the weekday circulation of *The New York Times* was more than 1.03 million daily, with a Sunday circulation of more than 1.45 million. The average number of monthly unique visitors to NYTimes.com in 2008 was 19.5 million in the United States alone; in September 2009, the number of monthly unique visitors reached 21.5 million. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, N.Y.

7. Plaintiff Ron Nixon is a reporter for The Times.

8. Defendant Treasury is an agency of the federal government that has possession and control of the records that NYT seeks. OFAC is a unit within the Treasury that administers and enforces embargoes and economic sanctions against certain foreign countries and regimes, and certain identified private parties. Countries subject to OFAC sanctions include Burma (Myanmar), Iran, Iraq, North Korea, Sudan, Syria, and Zimbabwe. OFAC authorizes

exemptions to prohibited transactions both by general license and by specific licenses issued to corporate and individual applicants on a case-by-case basis.

FACTS

OFAC LICENSE DATABASE

9. OFAC maintains a database that contains, among other information, the identities of the individuals and corporations who have OFAC licenses (the “OFAC License Database”).

10. There is no legitimate privacy interest in the OFAC License Database as the OFAC licensees have sought and received an important public benefit with implications for our foreign policy and no intimate personal information is involved. The public has a legitimate interest in knowing who receives licenses and how OFAC awards such exemptions from economic sanctions and embargoes and monitors its licensees.

FOIA REQUEST

11. On or about December 19, 2007, NYT submitted a FOIA request to Treasury (the “Request”) seeking copies of any OFAC database identifying “individuals and companies with OFAC licenses,” and also seeking other documents necessary to understand and interpret each database, including “record layouts, codesheets, etc.”

12. Despite the statutory deadlines of FOIA, Treasury failed to produce the requested records and failed to issue a denial of the Request for more than nine months.

PREVIOUS LITIGATION

13. NYT then sought to compel Treasury to release the OFAC License Database by initiating a FOIA action in this Court, styled *The New York Times Company and*

Ron Nixon v. United States Department of Treasury, No. 08 Civ. 8341 (PGG) (filed Sept. 29, 2008).

14. While the lawsuit was pending, in March 2009, Treasury produced the OFAC License Database in redacted form. Identifying information for all individual licensees was redacted.

15. On June 22, 2009, the Court entered a Stipulation and Order of Settlement and Dismissal ("Settlement Order") in *The New York Times Company and Ron Nixon v. United States Department of Treasury*, No. 08 Civ. 8341 (PGG), dismissing the matter with prejudice. As part of the Settlement Order, Treasury and NYT agreed to sever the issue of the redaction of the individual licensees' identifying information and to permit NYT to challenge this redaction through an administrative appeal pursuant to the normal procedures of FOIA.

16. Treasury's compliance with respect to other materials covered by the Settlement Order is not at issue in this action.

ADMINISTRATIVE APPEAL

17. On or about July 17, 2009, NYT filed with OFAC its administrative appeal of the redaction of the identifying information concerning individual licensees, as permitted by the Settlement Order.

18. Treasury denied NYT's administrative appeal on September 18, 2009. Treasury's denial indicated that it was withholding the information "based solely" on FOIA Exemption 6 (relating to personal privacy).

COUNT I

19. NYT repeats, realleges and incorporates the allegations in the foregoing paragraphs as though fully set forth herein.

20. Treasury is an agency subject to FOIA, 5 U.S.C. § 552(f), and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

21. Treasury has asserted no lawful basis under FOIA for withholding the information concerning the identity of individual licensees.

22. Treasury's failure to provide this information violates FOIA generally, and specifically 5 U.S.C. § 552(a)(3).


23. NYT is entitled to an order compelling Treasury to produce this information.

REQUEST FOR RELIEF

WHEREFORE, NYT respectfully requests that this Court:

- a. Declare that the redacted information identifying individual licensees is public under 5 U.S.C. § 552;
- b. Order Treasury to provide those records to NYT within 20 business days of the Court's order;
- c. Award NYT the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and
- d. Grant NYT such other and further relief as this Court deems just and proper.

Dated: New York, New York
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